Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-442-1991
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND MOHAMED YUSOFF SCJJ
8 NOVEMBER 1991

Islamic Law *— Conversion to Islam — Whether person has renounced Islamic faith — Ruling of fatwa committee — Evidence of document examiner — Administration of Muslim Law Enactment (Kedah) 1952 ss 37, 139, 140 & 141 — Federal Constitution art 121(1A)*

Evidence *— Evidence of document examiner — Export evidence — To be reviewed with caution but may be given due consideration and weight in context of other evidence*

In this case the appellant had applied for a declaration that her deceased son at the time of his death on 3 October 1990 was not a Muslim and/or had renounced the Islamic faith and for the consequential declaration that she was entitled to the body of the deceased. The deceased was born a Sikh and brought up in the Sikh faith. He converted to Islam on 1 June 1991 before the District Kadi of Kulim and the conversion was duly registered with the Majlis Agama Islam Kedah in accordance with s 139 of the Administration of Muslim Law Enactment 1962 of Kedah. The appellant had contented that subsequent to the conversion the deceased had by a deed poll on 9 September 1991 renounced the Islamic faith and resumed the practice of the Sikh faith. It was also alleged that the deceased had been rebaptized by a Sikh priest at a Sikh temple and that the deceased had regularly attended the congregation at the Sikh temple. It was also contended that the deceased continued to eat pork and had not been circumcized. There was evidence that the deceased was engaged to be married to a Muslim girl and that the marriage was scheduled to take place on 25 November 1991. At the trial before the High Court, the learned judicial commissioner found that the signature on the deed poll was not that of the deceased and he also rejected the evidence of the Sikh priest and that of the deceased's brother with regard to the rebaptism and the congregation at the Sikh temple. He held that the deceased was a Muslim at the time of his death. The appellant appealed. At the hearing of the appeal, the Supreme Court remitted the case to the High Court for the learned judicial commissioner to refer certain questions of Islamic law that arose to the Fatwa Committee of Kedah. This was done and after receiving the fatwa the learned judicial commissioner confirmed his earlier findings and decision. The appellant appealed.

Held, dismissing the appeal:
Per Hashim Yeop A Sani CJ (Malaya):
(1) The learned judicial commissioner was entitled to accept the answers of the fatwa committee to the questions which were

referred to it and which were agreed to by all parties. The fatwa committee was of the opinion that the deceased was a Muslim as he had been duly converted to Islam and there was no decision of a syariah court which decided that he had renounced or left the Islamic faith.

(2) The evidence of the document examiner should be viewed with caution as it is only an opinion evidence. But such evidence is entitled to be given proper consideration and weight in the context of the other evidence available to the court.

(3) The learned judicial commissioner had considered all the evidence before him and he had made a number of firm findings of fact which cannot be said to be against the weight of the evidence. The appellate court would not interfere with the findings of fact of the trial judge who saw and heard the witnesses and made an assessment on the credibility and weight of the evidence before him. He had not misdirected himself in law or in fact.

Per Mohamed Yusof SCJ:

(1) The foremost question to be determined is whether the deceased had renounced Islam during his lifetime and the only forum qualified to answer the question is the syariah court. It would not be feasible to direct the judicial commissioner to refer the matter to the chairman of the fatwa committee under s 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned judicial commissioner, for a ruling by the committee under s 37(4). This is a matter which is within the jurisdiction of the syariah court and not the High Court. Further, s 37(4) has been overtaken and superseded by the constitutional amendment in art 121(1A) of the Federal Constitution.

(2) However, all the parties concerned had consented to the reference of certain questions to the fatwa committee for determination, and the judicial commissioner, after receiving the fatwa from the fatwa committee, had confirmed his earlier findings. On this basis, the appellant's application to reopen the case on different issues cannot be allowed. The fatwa issued by the committee is clear and should be adhered to as it had been sought by the parties.

[Bahasa Malaysia summary

Di dalam kes ini perayu telah memohon deklarasi bahawa anak lelakinya pada masa ia meninggal dunia pada 3 Oktober 1991 bukan seorang Islam dan/atau ia telah keluar dari agama Islam dan untuk deklarasi lanjutan bahawa ia berhak mendapat mayat simati itu. Simati telah dilahirkan seorang Sikh dan dididik mengikut agama Sikh. Ia telah memeluk agama Islam pada 1 Jun 1991 di hadapan Kadi Daerah Kulim dan kemasukannya telah didaftar mengikut s 139 Enakmen Pentadbiran Agama Islam 1962, Kedah. Perayu telah berhujah bahawa selepas simati memeluk agama Islam ia telah melalui deed poll pada 9 September 1991 menolak agama Islam dan kembali kepada amalan

kepercayaan Sikh itu. Juga dihujahkan bahawa simati telah diterima balik ke agama Sikh oleh seorang padri Sikh di kuil Sikh dan simati selalu hadir bersembahyang di kuil Sikh. Dihujah juga bahawa simati terus memakan babi dan tidak berkhatan. Ada keterangan yang diberi bahawa simati telah bertunang dengan seorang perempuan Islam dan perkahwinan mereka telah ditetapkan pada 25 November 1991. Di dalam perbicaraan di hadapan Mahkamah Tinggi, yang arif pesuruhjaya kehakiman telah memutuskan bahawa tandatangan dalam deed poll itu bukan tandatangan simati dan beliau juga menolak keterangan padri Sikh dan adik simati mengenai penerimaan semula simati ke agama Sikh dan kehadirannya untuk bersembahyang di kuil Sikh. Beliau memutuskan bahawa simati adalah seorang Islam pada masa ia meninggal dunia. Perayu telah membuat rayuan. Apabila rayuan itu didengar, Mahkamah Agung telah menghantar kes itu balik ke Mahkamah Tinggi supaya yang arif pesuruhjaya kehakiman merujuk beberapa soalan mengenai hukum Syarak yang timbul kepada Jawatankuasa Fatwa Kedah. Ini telah dibuat dan selepas mendapat jawapan dari jawatankuasa fatwa itu yang arif pesuruhjaya kehakiman telah mengesahkan pendapat dan keputusannya. Perayu telah membuat rayuan.

Diputuskan, menolak rayuan itu:

Menurut Hashim Yeop A Sani HB (Malaya):

(1) Yang arif pesuruhjaya kehakiman berhak menerima jawapan-jawapan dari jawatankuasa fatwa kepada soalan-soalan yang dikemukakan kepada mereka dan yang mana telah dipersetujui oleh semua pihak. Jawatankuasa fatwa berpendapat bahawa simati adalah seorang Islam kerana ia telah sabit keIslamannya apabila ia mengucap dua kalimah syahadat di hadapan kadi seperti yang tercatit di dalam surat ikrar orang yang masuk Islam dan kekal sebagai seorang Islam kerana tidak ada keputusan dari mana-mana mahkamah syariah yang mensabitkan ia terkeluar daripada Islam.

(2) Keterangan yang diberi oleh pemeriksa dokumen harus dilihat dengan berhati-hati, kerana ia hanyalah pendapat. Tetapi keterangan itu harus dipertimbangkan dalam konteks keterangan-keterangan yang lain.

(3) Yang arif pesuruhjaya kehakiman telah menimbang semua keterangan di hadapannya dan telah membuat berberapa pendapatnya yang teguh dan yang tidak boleh dikatakan berlawanan dengan tekanan beratnya keterangan. Mahkamah rayuan tidak seharusnya mengganggu pendapat-pendapat fakta hakim yang membicarakan kes itu yang telah melihat dan mendengar saksi-saksi dan membuat taksiran mengenai kebolehpercayaan dan kesan keterangan yang diberi. Beliau telah tidak menyalaharah diri di dalam perkara undang-undang atau fakta.

Menurut Mohamed Yusoff HMA:

(1) Soalan terutama untuk penentuan ialah sama ada simati telah terkeluar dari agama Islam dalam riwayatnya dan mahkamah syariah sahajalah yang berkelulusan untuk menjawab soalan itu.

Pesuruhjaya kehakiman tidak boleh diarah supaya merujuk perkara ini kepada pengerusi majlis fatwa di bawah s 37(1) Enakmen Pentadbiran Undang-Undang Islam (Kedah) 1962, beralaskan fakta yang ditentukan oleh pesuruhjaya kehakiman, untuk keputusan oleh majlis itu di bawah s 37(4). Ini ialah perkara di dalam bidang kuasa mahkamah syariah dan bukan Mahkamah Tinggi. Selanjutnya, perkara 121(1A) yang merupakan pindaan kepada Perlembagaan Persekutuan telah mengatasi s 37(4).

(2) Walaupun demikian, semua pihak-pihak berkenaan telah bersetuju untuk merujuk soalan-soalan itu kepada majlis fatwa untuk penentuan, dan pesuruhjaya kehakiman, selepas menerima fatwa dari majlis fatwa itu, telah mengesahkan keputusannya yang terdahulu. Atas alasan ini, permohonan perayu untuk membuka kembali kes ini dengan isu-isu yang lain tidak boleh diterima. Fatwa yang dikeluarkan oleh majlis itu terang dan harus diikut kerana ia telah diminta oleh pihak-pihak itu.]

Cases referred to

1 *PP v Mohamed Kassim bin Yatim* [1977] 1 MLJ 64 (refd)
2 *Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor* [1991] 3 MLJ 174 (refd)

Legislation referred to

Federal Constitution art 121(1A)
Administration of Muslim Law Enactment 1952 (Kedah) ss 37, 139, 140, 141
Administration of Muslim Law Enactment 1965 (Perak) s 146(2)

Appeal from: Originating Summons No 24-795-1991 (High Court, Penang)

Karpal Singh with *N Shanmugam* and *Balwant Singh* (*Karpal Singh & Co*) for the appellant.
Haliza Aini bte Dato' Othman (Federal Counsel) for the first respondent.
Hasan bin Lah (Legal Adviser, Kedah) for the second respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya): This appeal arose from the dismissal by the High Court Penang on 16 October 1991 of an application by the appellant for a declaration that her son, Gurdev Singh s/o Guruvak Singh ('the deceased'), was at the time of his death on 3 October 1991 not a Muslim and/or had renounced the Islamic faith and also for the consequential declaration that she was entitled to claim the body of the deceased from the district hospital mortuary, Bukit Mertajam.

The deceased was at the time of his death about 23 years old, born a Sikh and brought up in the Sikh faith. He had been living with his mother ('the appellant') in the district of Kulim, in the state of Kedah. His body was found on 3 October 1991 at Jalan Mengkuang/Berapit, Kubang Semang, Bukit Mertajam. Prior to his death he was a supervisor at a factory in

A Kulim. The deceased had a girl friend (or fiancee), a Malay girl named Siti Noraini, working at the the same factory.

It is not disputed that the deceased converted to Islam on 1 June 1991 before the District Kadi of Kulim. It is also not disputed that the conversion was duly registered with the Majlis Agama Islam, Kedah in accordance with
B s 139 of the Administration of Muslim Law Enactment 1962 of Kedah.

In her originating summons the appellant contended that subsequent to the conversion and before his death the deceased had by a deed poll on 9 September 1991 renounced the Islamic faith and resumed the practice of the Sikh faith. It was also alleged that the deceased was rebaptized by a Sikh priest at a Sikh temple in Kulim about a month before his death and that
C the deceased had regularly attended the congregation at the Sikh temple thereafter. It was also contended that the deceased continued to eat pork and had not been circumcized.

In his written judgment the learned judicial commissioner set out the chronological events material to the case as follows:

D 1989	Deceased and Siti Noraini working in the same factory became acquainted.
1 June 1991	Deceased embraced Islam (not disputed).
6 September 1991	Deceased assaulted Siti Noraini in front of the factory because Siti Noraini went out with another man,
E	a Chinese, by the name of Jeffrey. That evening deceased took Siti Noraini to a restaurant together with one Krishna Kumar.
7 September 1991	Deceased took Siti Noraini to Penang.
9 September 1991	The date of the alleged deed poll.
28 September 1991	Deceased and Siti Noraini were engaged at her house.
F	Deceased as well as his brother (Balwinder Singh) went to the ceremony. Deceased gave a ring to Siti Noraini. According to Siti Noraini in her evidence, the wedding was scheduled to take place on 25 November 1991.
G 2 October 1991	Deceased came to the house where Siti Noraini was staying at 11pm and sent her to the factory to work. That was the last time that Siti Noraini saw the deceased.
3 October 1991	At 6.45am the police was informed of the deceased's body.

H At the conclusion of the hearing before the learned judicial commissioner, he came to the conclusion that the signature on the deed poll was not that of the deceased. He also rejected the evidence of the Sikh priest and that of the deceased's brother with regard to the rebaptism and the congregation at the Sikh temple.

I The appellant appealed. At the hearing of the appeal this court remitted the case to the High Court for the learned judicial commissioner to refer certain questions of Islamic law that arose to the fatwa committee under s 37 of the Enactment. The High Court sat again on 26 October 1991 for the purpose of referring the questions.

After receiving the fatwa from the fatwa committee the learned judicial commissioner sat on 28 October 1991 and confirmed his earlier findings and decision. Thus the present appeal.

The questions referred to the fatwa committee and the answers are reproduced below:

S: Adakah seseorang yang beragama Islam yang membuat perisytiharan melalui deed poll bahawa dia menolak agama Islam terkeluar daripada agama Islam?

J: Jika seseorang yang beragama Islam yang membuat perisytiharan melalui deed poll bahawa dia menolak agama Islam maka adalah ia terkeluar daripada Islam (murtad).

S: Adakah seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembahyang agama Sikh terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembahyang agama Sikh juga terkeluar daripada agama Islam (murtad).

S: Adakah seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh adalah terkeluar daripada Islam (murtad). Namun begitu untuk menentukan sama ada seseorang itu terkeluar daripada Islam (murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana mahkamah syariah dan dihukum ia sebagai terkeluar daripada Islam (murtad), jika tidak ada disabitkan oleh mana-mana mahkamah syariah dan dihukum maka seseorang itu tetap di dalam agama Islamnya.

S: Adakah seseorang yang beragama Islam yang memakan daging babi terkelaur daripada agama Islam?

J: Seseorang yang beragama Islam yang memakan daging babi tiada terkeluar daripada agama Islam.

S: Adakah seseorang yang bukan beragama Islam yang kemudiannya memeluk agama Islam tetapi tidak berkhatan sehingga dia meninggal dunia, mati sebagai seorang yang bukan beragama Islam, semata-mata kerana dia tidak berkhatan?

J: Seseorang yang memeluk agama Islam yang tiada berkhatan sah Islamnya.

Pada pendapat Jawatankuasa Fatwa Majlis Agama Islam Negeri Kedah Darulaman yang bersidang pada 27 Oktober 1991 bahawa berhubung Gurdev Singh a/l Guruvak Singh, Kad Pengenalan: A 1028701 ia adalah seorang Islam dengan sahnya kerana telah sabit keIslamannya dengan ia mengucap dua kalimah syahadat di hadapan Kadi Daerah Kulim, Negeri Kedah Darulaman bertarikh 1 Jun 1991 seperti yang tercatit di dalam borang ikrar orang yang masuk Islam bil 5/91 dan berkekalan Islamnya kerana tidak ada hukuman dari mana-mana mahkamah syariah negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam.

After hearing Mr Karpal Singh's submission, the issues to be determined in this appeal can in fact be reduced to only two points, namely, (1) whether the learned judicial commissioner was correct in not allowing the case to be reopened after receiving the fatwa from the fatwa committee; (2) the existence or otherwise of a genuine deed poll.

The deed poll is crucial to determine whether the deceased died a Muslim. The relevant part of the fatwa on this point states in effect that if a Muslim executes a deed poll renouncing Islam he becomes a 'murtad' (apostate).

A Under the Kedah Enactment only three provisions deal with matters relating to converts to Islam, namely, ss 139, 140 and 141. These provisions read:

> 139 The Majlis shall maintain a register of the names of all persons converted to the Muslim Religion within the State, together with such particulars in
B respect of their conversion as may be prescribed by rule.
> 140 No person shall be converted to the Muslim Religion otherwise than in accordance with Muslim Law and the provisions of this Enactment or any rules made thereunder.
> 141 Any Muslim who converts any person to the Muslim Religion shall as expeditiously as possible report such conversion to the Majlis with all
C necessary particulars.

There is no provision in the Enactment for converts to leave Islam. There was such a provision in s 146(2) of the Perak Enactment (The Administration of Muslim Law Enactment 1965) which was, however, repealed in 1975. The original provision in the Perak Enactment reads:

D > 146(2) *Semua orang Islam adalah terikat dengan Undang-undang ini*, dan sekiranya mana-mana orang Islam keluar daripada Ugama Islam maka hendaklah ia menyatakan kapada Mahkamah akan keputusannya itu dan Mahkamah itu hendaklah mengisytiharkan perkara itu.

Only the words emphasized remain after the repeal. Before the repeal any
E convert who wished to leave Islam could have the matter certified by the syariah court.

We are of the view that clear provisions should be incorporated in all the state Enactments to avoid difficulties of interpretation by the civil courts. This is particularly important in view of the amendment to art 121 of the
F Federal Constitution made by Act A704 of 1988. The new cl 1A of art 121 of the Constitution effective from 10 June 1988 has taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the syariah courts. But that clause does not take away the jurisdiction of the civil court to interpret any written laws of the states enacted for the administration of Muslim law. One of the opinions given in the fatwa of the
G fatwa committee in this case was that a convert who executes a deed poll renouncing Islam is a murtad (apostate). Of course this opinion is valid only for the state of Kedah. If there are clear provisions in the state Enactment the task of the civil court is made easier when it is asked to make a declaration relating to the status of a person whether such person is or is
H not a Muslim under the Enactment. A clear provision can for example be in the form of a provision imposing obligation on the relevant authority to keep and maintain a register of converts who have executed a deed poll renouncing Islam.

As regards the first issue, the questions which were referred by the trial judge to the fatwa committee were agreed to by all parties concerned and
I the direction to refer the questions to the fatwa committee was given by this court to the trial judge for the trial judge to apply the fatwa to the facts as found by him. Therefore the trial judge was perfectly correct in not allowing the case to be reopened.

As regards the second issue, the trial judge applied the test of proof on the balance of probabilities and he stated this frequently in his written

judgment. Although it was an originating summons the case proceeded as a trial on the issues. A number of witnesses gave evidence.

Mr Karpal Singh complained that the learned judicial commissioner should have accepted the affidavit of the Sikh priest relating to the alleged 'baptism' of the deceased. But it must be noted that the trial judge also saw and heard the evidence of Siti Noraini, the fiancee of the deceased and who was one of the last persons who saw the deceased before he was found dead the next morning. As the trial judge said, it must not also be forgotten that Siti Noraini had nothing to gain by not telling the truth.

The trial judge also heard the evidence of Balwinder Singh, brother of the deceased, and made his own assessment of the latter's testimony at length in his judgment.

Mr Karpal Singh also complained that the learned judicial commissioner should not have relied on the evidence of the document examiner to come to a conclusion that the deed poll was a forgery. The document examiner who gave evidence stated that after examining ten specimen signatures and the signature on the deed poll and the signature on the form (the borang ikrar under the Enactment), he found that the signature on the deed poll did not originate from the writer of the signatures on the other documents. It is trite law that evidence by a handwriting expert should be viewed with caution as it is only an opinion evidence. But such evidence is entitled to be given proper consideration and weight in the context of the other evidence available to the court. See also *PP v Mohamed Kassim bin Yatim.*[1] In this case the testimony of the document examiner was not the only evidence relied on by the trial judge to come to his conclusion. It is clear in his judgment that he considered all the evidence before him including the sequence of events which he had set out in his judgment. He found it difficult to accept the story submitted on behalf of the appellant as being highly improbable. At the conclusion of the hearing the trial judge made a number of firm findings of fact which cannot be said to be against the weight of evidence.

As an appellate court we would not like to interfere with the findings of fact of the trial judge who saw and heard the witnesses and made an assessment on the credibility and weight of evidence before him. He did not misdirect himself in law or in fact.

We accordingly dismissed the appeal with costs. Deposit to the respondent to account of taxed costs.

Appeal dismissed.

Mohamed Yusoff SCJ: I have had the benefit of reading the draft grounds of judgment of the learned Tan Sri Datuk Hashim Yeop A Sani CJ (Malaya). I would come to the same conclusion in dismissing this appeal for different reasons.

The question foremost to be determined is whether the deceased had effectively renounced the Islamic faith during his lifetime.

The evidence that have been advanced to the court were that the deceased had been baptized by a Sikh priest at his temple, he had executed a deed poll renouncing the Islamic faith and that his conduct did not conform to a person who professed to be a Muslim.

Quoting from a book by Prof Dr Ala'aul Deen Kharroufah entitled *The Judgment of Islam on the Crimes of Salman Rushdie*, Mr Karpal Singh on behalf of the appellant said that pronouncing adherence to Islam should not be accepted from hypocrites and that actions on the part of the deceased implied disbelief from his own conviction. Learned counsel quoted from p 54 of the book to show that the deceased had become an apostate:

> Apostasy according to the Shafei school is cutting one's adherence to Islam by intending to do so, by saying something which would cause one to fall into disbelief, or by action. No difference here is to be observed between whether this was done with the intention of sarcasm and satire or through conviction.
>
> Apostasy is the grossest form of disbelief and merits the heaviest punishment. It abrogates the good effect of one's good deeds if the apostate does not repent and return to Islam before death. An apostate's blood is to be spilled lawfully on account of his gross crime.
>
> In evidence of their opinion, Shafeis provide the Quar'anic verse that whoever leaves Islam and dies a disbeliever will lose all his deeds and reside in hell.

Learned counsel also cited *Ng Wan Chan v Majlis Ugama Islam Wilayah Persekutuan & Anor*[2] wherein the learned judge considered the conduct of the deceased in that case (almost similar as here) as a determining factor in deciding that the deceased there was not a Muslim. The learned judge in that case amplified his grounds (at p 177) in holding that:

> Murtad (apostasy) means a Muslim who renounces his religion (Islam) either by clearly declaring that he is no longer a Muslim or by his conduct which clearly shows that he is not a Muslim.

In the present case the learned judicial commissioner in declaring that the deceased was a Muslim observed in his judgment that:

> Tetapi tidak makan babi bukan syarat terdahulu (condition precedent) menjadi Islam. Kedudukannya adalah seperti seorang Hindu yang memakan daging lembu, seorang Kristian berzina atau, jika tidak silap saya, seorang Sikh yang menghisap rokok. Perbuatan itu tidak menjadikan seseorang itu tidak beragama Hindu, Kristian atau Sikh, mengikut yang berkenaan.

He further observed:

> Alegasi yang lebih serius ialah bahawa si mati bersembahyang di kuil Sikh dan dibaptisekan sebagai seorang yang beragama Sikh. Jika salah satu perbuatan ini terbukti tentulah dia telah murtad.

It is apparent from the observation made by the learned judicial commissioner that the determination of the question whether a person was a Muslim or had renounced the faith of Islam before death, transgressed into the realm of syariah law which needs serious considerations and proper interpretation of such law. Without proper authority to support his contention, it is not sufficient to say whether there is or there is not a condition precedent for a person to become a Muslim; or that if the deceased were proved to have had said his prayers at a Sikh temple he was definitely an apostate.

The present question, in my view, cannot be determined by a simple application of facts as has been found by the learned judicial commissioner on the basis of veracity and relevancy of evidence according to civil law.

Such a serious issue would, to my mind, need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence. A

On this view it is imperative that the determination of the question in issue requires substantial consideration of the Islamic law by relevant jurists qualified to do so. The only forum qualified to do so is the syariah court.

At the end of his argument before this court on 21 October 1991, Mr Karpal Singh conceded that our civil court is not qualified to determine this question in issue but urged that the court direct the learned judicial commissioner to refer the matter to the chairman of the fatwa committee under s 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned judicial commissioner for a ruling by the committee under s 37(4) of the Enactment. B C

In my view, Mr Karpal Singh's suggestion is not feasible. The amendment to art 121 of the Federal Constitution which came into effect on 10 June 1988 and the provision of the new art 121(1A) has taken away the jurisdiction of the High Court in respect of any matter within the jurisdiction of the syariah courts and this is such a matter which the syariah court has to determine. Further, I am also of the opinion that the provision in s 37(4) of the Kedah Administration of Muslim Law Enactment 1962 has been overtaken and superseded by the constitutional amendment in art 121(1A) of the Federal Constitution and on that view the request by Mr Karpal Singh for this court to direct the learned judicial commissioner to refer the matter for a ruling by the fatwa committee under the impugned section of the Enactment is not tenable. D E

However, by consent of all the parties, this court at its sitting on 21 October 1991, had directed the learned judicial commissioner to refer to the fatwa committee of the state of Kedah certain questions of Islamic law that arose in the proceedings for final determination of this suit by the learned judicial commissioner. The questions that were framed and referred to the committee were agreed to by the parties concerned. The learned judicial commissioner, after receiving the fatwa from the fatwa committee, confirmed his earlier findings and decisions. On this basis, in my view, Mr Karpal Singh's application to reopen the case on different issues cannot be allowed. F G

I am also of the view that since the fatwa was sought from the committee, clear directions from the committee should be adhered to.

The fatwa issued by the committee is clear in what it says:

> ... sama ada seseorang itu terkeluar daripada Islam (murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana mahkamah syariah dan dihukum ia sebagai terkeluar daripada Islam (murtad) jika tidak ada disabitkan oleh mana-mana mahkamah syariah dan dihukum maka seseorang itu tetap di dalam agama Islamnya. H

It further states that:

> ... berkekalan Islamnya kerana tidak ada hukuman dari mana-mana mahkamah syariah negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam. I

For these reasons I would also dismiss this appeal with costs.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim